

Court of Appeal

FOURTH APPELLATE DISTRICT

Division One

750 B Street, Suite 300

San Diego, CA 92101

www.courts.ca.gov

BASIC APPELLATE PROCEDURES AFTER AN APPEAL IS FILED AND THE RECORD IS PREPARED: INFORMATIONAL HANDOUT¹

(All references are to the California Rules of Court unless otherwise specified.)

I. Briefs

A. Filing Time Limits

1. The parties are notified when the record on appeal has been filed. (Rule 8.150(b).)
2. In an ordinary civil case, the appellant has 40 days from the date the record, or the reporter's transcript after a rule 8.124 election, is filed in the Court of Appeal to file an opening brief. (Rule 8.212(a)(1)(A).) The appellant has 70 days to do so after the filing of the rule 8.124 election where the appeal proceeds without the reporter's transcript. (Rule 8.212(a)(1)(B).) In a juvenile dependency case, the appellant has 30 days to file an opening brief. (Rule 8.416(e).) However, in a criminal or juvenile delinquency case, the appellant has 40 days from the filing of the record to file an opening brief. (Rules 8.360(c)(1), 8.412(b)(1).)
3. The respondent has 30 days from the date the appellant's opening brief is filed to file a respondent's brief. (Rules 8.212(a)(2), 8.360(c)(2), 8.412(b)(2).) If the respondent in a civil case has not already done so, it will be required to pay a filing fee of \$390 or obtain a waiver of the requirement from the court at the time the brief is filed. (Rule 8.25(c).)

¹ This informational handout provides a non-exhaustive summary of appellate procedures after the appeal is filed and the record prepared in appeals proceeding in the California Court of Appeal, Fourth Appellate District, Division One. Please consult the California Rules of Court to process your appeal properly. Information relating to the taking of an appeal and perfecting the record is available at http://www.courts.ca.gov/documents/civ_app_handout.pdf for civil appeals and http://www.courts.ca.gov/documents/crim_app_handout.pdf for criminal and juvenile appeals.

4. The brief of a non-appealing minor in a dependency appeal is due 10 days after the filing of the respondent's brief. (Rule 8.412(b)(4).)
5. The appellant has 20 days from the date the respondent's brief is filed to file an appellant's reply brief. (Rules 8.212(a)(3), 8.360(c)(3), 8.412(b)(3).)
6. For civil and juvenile appeals where a party is both an appellant and a respondent, the parties must submit a proposed briefing schedule (preferably by agreement) within 20 days after the second notice of appeal is filed. (Rules 8.216(a), 8.412(a)(2).) For criminal appeals, the defendant files the first opening brief unless the court orders otherwise. (Rule 8.360(e).) (See also § I.G below for special requirements regarding the format of briefs.)

B. Extensions of Time to File Briefs

1. Civil cases

- a. By stipulation. Except as otherwise provided by statute, the parties may extend the time under rule 8.212(a) to file a brief by up to 60 days by filing one or more stipulations in the Court of Appeal **before the brief is due**. Stipulations must be signed by and served on all parties and counsel must deliver a copy of the stipulation to his or her client. (Rules 8.60(f)(1), 8.212(b)(1).) The original signature of at least one party must appear on the stipulation filed with the court, while the signatures of the other parties may be in the form of copies of the signed signature page of the stipulation. (Rule 8.42.) Such a stipulation is effective on filing, as the Court of Appeal may not shorten a stipulated extension if the aggregate of extensions is 60 days or less. (Rule 8.212(b)(2).)
- b. By application. Where a party has been unable to obtain, or it would have been futile to seek, an extension by stipulation or the parties have stipulated to the maximum extension allowed under rule 8.212(b)(1), that party may apply to the Presiding Justice for an extension on a showing that such is the case and there is good cause. (Rule 8.212(b)(3); see also rules 8.50, 8.60(b), 8.63(a)(3).) The request must contain specific facts showing good cause for granting the application and state when the brief is due, how long an extension is requested, and whether any prior extensions have been granted, their length and whether granted by stipulation or by the court. (Rules 8.50, 8.60(c), 8.63(b).) In determining good cause, the reviewing court considers the factors listed in rule 8.63(b).

2. Criminal and juvenile delinquency cases

- a. The time for filing a brief in a criminal case cannot be extended by stipulation of the parties. (Rule 8.360(c)(4).)
- b. A party may apply to the presiding justice for an extension on a showing of good cause. (Rules 8.50, 8.60(b), 8.63(a)(3), 8.360(c)(4), 8.412(c).) The request must contain specific facts showing good cause for granting the application and state when the brief is due, how long an extension is requested, and whether any prior extensions have been granted and their length. (Rules 8.50, 8.60(c), 8.63(b).) In determining good cause, the reviewing court considers the factors listed in rule 8.63(b).

3. Other juvenile cases: Under rule 8.416(f) in appeals from judgments and appealable orders under Welfare and Institutions Code section 300 et seq. (dependency) and Family Code section 7800 et seq. (freeing a child from parental custody and control), only the reviewing court can grant extensions to serve and file briefs, based on an exceptional showing of good cause. (See Code Civ. Proc., § 45.)

4. Service and filing requirements. A party must either (i) file the original request for an extension with proof of service on opposing counsel, together with copies and preaddressed, stamped envelopes for each party or (2) if the parties have agreed in writing to accept service by facsimile and are willing to forego receiving conformed copies, file the request by facsimile to 619 645-2495. (Rules 8.44(b)(4), 8.50, 8.60(c).) (For more information about the court's facsimile filing program go to the court's website located at <http://www.courts.ca.gov/9408.htm#tab18466.htm>.) In an ordinary civil case, the client must also be served with any extension request; however, the evidence of mailing or other delivery need not state the client's address. (Rule 8.60(f).) Once the court has ruled on the request, the copies will be conformed and mailed to the parties in the envelopes provided. In a criminal matter, no envelope is necessary for the Attorney General or Appellate Defenders Inc.

5. Decision. All requests to extend time to file briefs are considered immediately. (Ct. App. Fourth Dist., Div. One, Internal Operating Practices & Proc., XI, Motions.)

C. Failure to Timely File a Brief

1. Court notice. If an appellant's opening brief or a respondent's brief is not timely filed, the court will send a notice under rule 8.220(a) (civil cases), rule 8.360(c)(5) (criminal cases), rule 8.412(d) (juvenile delinquency cases), or rule 8.416(g) (juvenile dependency cases). This notice gives a party in a civil or juvenile dependency

case an additional 15 days (rules 8.220(a), 8.416(g)), and a party in a criminal or juvenile delinquency case an additional 30 days (rules 8.360(c)(5), 8.412(d)(1)), within which to file the brief.

2. Failure to file in an ordinary civil or a criminal case. If the appellant's opening brief is not filed within 15 days in an ordinary civil case from the date of the rule 8.220(a) notice, the appeal may be dismissed. (Rule 8.220(a)(1) & (c).) If the appellant's opening brief is not filed within 30 days in a criminal or juvenile delinquency case, the appeal may be dismissed if the appellant is the People or is the defendant and is not represented by appointed counsel. (Rules 8.360(c)(5)(A)(i), (iii) & (6), 8.412(d)(1)(A)(i), (iii).) If the appellant is the defendant and is represented by appointed counsel on appeal, the court may relieve that appointed counsel and appoint new counsel. (Rules 8.360(c)(5)(A)(ii) & (6), 8.412(d)(1)(A)(ii).) If the respondent's brief is not filed before the expiration of the time specified in the notice, the court may decide the appeal on the record, the opening brief, and any oral argument by the appellant. (Rules 8.220(a)(2) & (c), 8.360(c)(5)(B) & (6), 8.412(d)(1)(B).)
3. Failure to file in certain dependency cases. If a party fails to timely file an appellant's opening brief in a juvenile dependency appeal in Orange, Imperial or San Diego County or in an appeal from a termination of parental rights, the court may dismiss the appeal where the appellant is either the county or a party not represented by appointed counsel. (Rules 8.412(d)(1)(A) (i), (iii) & (2), 8.416(g).) If the appellant is other than the county and is represented by appointed counsel on appeal, the court will relieve that appointed counsel and appoint new counsel. (Rules 8.412(d) (1)(A)(ii) & (2), 8.416(g).) If the respondent's brief is not filed before the expiration of the time specified in the notice, the court may decide the appeal on the record, the opening brief, and any oral argument by the appellant. (Rules 8.412(d)(1)(B) & (2), 8.416(g).)
4. Requesting an extension. Within the grace period specified in (C)(1) above, a party may apply under rules 8.50 and 8.60(b) and (c) for an extension of that time period for good cause. If an extension of time is granted, but the brief is not filed within the extended period, the court may impose the sanction under rules 8.220(c) and 8.360(c)(5) without further notice. (Rules 8.220(d), 8.360(c)(6), 8.412(d)(3), 8.416(g).)
5. Requirement for court approval. Late-filed briefs must be approved by the Presiding Justice before they will be accepted for filing. (Rule 8.60(d).)

D. Number of Copies and Service Requirements

1. Filing. A party must file the original and four copies of a brief, with proof of service as required below. (Rules 8.44(b)(1), 8.29(a).)

Parties must also submit an electronic copy of each brief filed. (Rule 8.212(c)(2).) An electronic copy of each brief should be transmitted to the Court of Appeal pursuant to the instructions located at <http://www.courts.ca.gov/9408.htm>. The electronic copy does not take the place of any of the paper copies and does not constitute a filing.

2. Service. A party must serve a copy of its brief on the clerk of the superior court, on counsel for separately represented parties, on each unrepresented party and, when required under rule 8.29, on a non-party public officer or agency or the Attorney General. (Rules 8.212(c), 8.360(d), 8.25(a).) In addition:
 - a. In criminal and juvenile delinquency matters, the district attorney, the Attorney General and the defendant must also be served. (Rules 8.360(d)(1), 8.412(e)(4), 8.29(c)(2)(A).)
 - b. In ordinary civil matters, service of the electronic copy of the brief on the Court of Appeal as required in rule 8.212(c)(2) satisfies the requirement for service on the Supreme Court. If providing an electronic copy creates an undue hardship, four paper copies of each brief must also be served on the California Supreme Court (rules 8.212(c)(2), 8.44(b)(1)) at:

350 McAllister Street
Second Floor
San Francisco, CA 94102-4783
(415) 865-7000
 - c. In juvenile delinquency and dependency cases, a copy of the brief must also be served on the child's trial counsel or guardian ad litem and, if counsel is appointed, on the district appellate project, Appellate Defenders Inc. (Rule 8.412(e).)

E. Binding and Covers

1. Binding. Briefs must be bound on the left margin. (Rule 8.204(b)(8).) No plastic covers will be accepted. (Ct. App., Fourth Dist., Local Rules, rule 2.) If stapled, the bound edge and the staples must be covered with tape. (Rule 8.204(b)(8).)
2. Covers. The cover must contain the information specified in Rule 8.204(b)(10). It must be in the color prescribed by rule 8.40(b), as follows:

Appellant's opening brief or appendix - green
Respondent's brief or appendix - yellow
Appellant's reply brief or appendix - tan
Joint appendix - white
Amicus curiae brief - gray

Answer to amicus curiae brief - blue
Petition for rehearing - orange
Answer to petition for rehearing - blue
Original proceedings (petition, answer & reply) - red
Petition for transfer from the Appellate Division - white
Answer to petition for transfer from the Appellate Division - blue
Petition for review - white
Answer to petitions for rehearing & review - blue
Reply to answer (review) - white
Motion - no cover.

F. Contents, Form and Length of Briefs

1. Contents. The required contents of briefs generally and the appellant's opening brief specifically are set forth in rule 8.204.
 - a. Generally. All briefs must (i) have a table of contents and table of the authorities cited therein, (ii) identify each issue by a heading that summarizes the point, (iii) support each issue with argument and, if possible, citation to authority and (iv) include a Certificate of Interested Entities or Persons (see section II. below for more information about the certificate requirement). (Rules 8.204(a)(1)(B), 8.208(d)(1).) An appellant's opening brief must also (i) state the type of case, the relief sought in the superior court and the decision being appealed, (ii) state why the decision is appealable, and (iii) summarize the significant facts, limited to those matters contained in the record. (Rule 8.204(a)(2)(A)-(C).)
 - b. Citations to the record. All references to the record must be supported by citations to specific volume and page numbers of the record. (Rule 8.204(a)(1)(C).)
 - c. Citation to authority. Citations to authority must follow the *California Style Manual* (strongly preferred) or the *Bluebook: A Uniform System of Citation* and be consistent throughout the brief. (Rules 8.204(b)(3), 1.200.)
 - d. Attachments. Briefs may include attachments of no more than 10 pages of exhibits, other matters in the record, regulations or other citable materials that are not readily accessible. (Rule 8.204(d).)
2. Format. The mandatory rules governing format of briefs are set forth in rule 8.204(b).
3. Length. A brief produced on a computer must not exceed 14,000 words, including footnotes, and must include a certification by counsel or an unrepresented party as to the number of words in the

brief. (Rule 8.204(c)(1).) A brief produced on a typewriter must not exceed 50 pages. (Rule 8.204(c)(2).)

- G. Special requirements for cases involving multiple or cross-appeals. In such cases, the respondent's brief and cross-appellant's opening brief must be combined into a single document (with a yellow cover), as must the appellant's reply brief and cross-respondent's brief (with a tan cover). (Rules 8.8.216(b), 8.40(b)(2).) A combined brief must not exceed twice the word or page limits that would otherwise apply (see § I.F.3, above). Rule 8.204(c)(4).)

II. Certificate of Interested Entities or Persons

- A. When Required. In appeals in civil cases other than family, juvenile, guardianship, and conservatorship cases, each party is required to file a certificate of interested entities or persons. (Rule 8.208(b).)
- B. Purpose. The certificate provides justices of the Court of Appeal with additional information to help them determine whether they must disqualify themselves from a particular proceeding pursuant to the California Code of Judicial Ethics. (Rule 8.208(a).)
- C. Contents of Certificate. If an entity is a party, that party's certificate must list any other entity or person that the party knows has an ownership interest of 10 percent or more in it. (Rule 8.208(e)(1).) If a party knows of any person or entity, other than the parties themselves, that has a financial or other interest in the outcome of the proceeding that the party reasonably believes the justices should consider in determining whether to disqualify themselves, the party's certificate must list that entity or person and identify the nature of the interest of the person or entity. (Rule 8.208(e)(2).) An optional version of the certificate is available at <http://www.courts.ca.gov/documents/app008.pdf>. The certificate must be signed by appellate counsel or, if none, by the unrepresented party.
- D. When to File. Except as otherwise provided in rule 8.208, if a party files a motion, an application, or an opposition to such motion or application in the Court of Appeal before filing its principal brief, the party must serve and file its certificate at the time it files the first such motion, application, or opposition and must also include a copy of this certificate in the party's principal brief. If no motion, application, or opposition to such motion or application is filed before the parties file their principal briefs, each party must include its certificate in its principal brief after the cover and before the tables. (Rule 8.208(d)(1).)
- E. Filing Certificate under Seal. If the identity of any party or any entity or person subject to disclosure under rule 8.208 has not been publicly disclosed in the proceedings and a party wants to keep that identity confidential, the party may serve and file an application for permission to file its certificate under seal separately from its principal brief, motion, application, or opposition. If the application is granted, the party must file

the certificate under seal, but without serving it, within 10 days of the court's order granting the application. (Rule 8.208(d)(1) & (2).)

- F. Consequences of Failure to File. If a party fails to file a certificate, the clerk must notify the party by mail that the party must file the certificate within 15 days after the clerk's notice is mailed and that if the party fails to comply, the court may strike the document or dismiss the appeal if the party is the appellant, or strike the document or decide the appeal on the record, the opening brief, and any oral argument by the appellant if the party is the respondent. (Rule 8.208(d)(3).)
- G. Obligation to Update. A party must promptly serve and file a supplemental certificate in the reviewing court upon learning of changed or additional information that must be disclosed under rule 8.208(e). (Rule 8.208(f).)

III. Motions

- A. Requirements. A party making a motion in the Court of Appeal must file the original and one copy thereof and show proof of service on opposing counsel and, if the motion requests an extension of time to designate the record or to pay the court reporter, on the clerk of the superior court. (Rules 8.54(a), 8.44(b)(4).) The motion must state the ground for the motion, the papers on which it is based, and the order or relief requested. (Rule 8.54(a)(1).) Additionally, it must be accompanied by a memorandum and, if it is based on matters not included in the appellate record, the supporting documentary evidence (declarations and exhibits) of such matters. (Rule 8.54(a)(2).)
- B. Opposition. The court will hold a motion for 15 days after filing and any opposition thereto must be served and filed within that 15 day period. (Rule 8.54(a)(3).) The failure of the adverse party to oppose the motion may be deemed as consent to the granting of the motion. (Rule 8.54(c).)
- C. Certificate of Interested Entities or Persons. If a motion or opposition is the first document filed by a party in the appeal, it must be accompanied by a certificate of interested entities or persons (as discussed in § II., above).
- D. Additional Copies. If a ruling on the motion is deferred to the merits panel, the parties will be notified to file three additional copies of their moving or opposing papers with the court.

IV. Voluntary Abandonment, Settlement and Dismissal

A. Civil Appeals

1. Settlement. The court has a voluntary settlement program, which is described at <http://www.courts.ca.gov/2519.htm#settle>. The guidelines and form for initiating a voluntary conference are attached. (Ct. App., Fourth Dist., Div. One, Internal Operating Practices & Proc., § VIII.)
 - a. Notice to the Court of Appeal. If a civil case settles after a notice of appeal has been filed, either in its entirety or as to any party, the settling appellant must immediately serve and file a notice of settlement in the Court of Appeal. If the case settles after the appellant receives a notice setting oral argument, the appellant must immediately notify the Court of Appeal of the settlement by telephone or another expeditious method. (Rule 8.244(a)(2).)
 - b. Notice to the superior court. Where the parties have designated a clerk's or a reporter's transcript and the record has not been filed in the Court of Appeal, the settling appellant must also immediately serve a copy of the notice on the superior court clerk. (Rule 8.244(a)(1).)
 - c. Requirement for abandonment or request for dismissal. Within 45 days after filing notice of settlement (unless otherwise ordered by the Court of Appeal), the settling appellant must file an abandonment of the appeal in the superior court, if the record has not yet been filed in the Court of Appeal, or a request to dismiss the appeal, if the record has been filed in the Court of Appeal. (Rule 8.244(a)(3).) If the appellant fails to do so and does not file a letter setting forth good cause why the appeal should not be dismissed, the Court of Appeal may dismiss the appeal as to that appellant and order each side to bear its own costs on appeal. (Rule 8.244(a)(4).)
2. Abandonment.
 - a. Right to abandon. Before the record is filed on appeal, the appellant has the absolute right to abandon the appeal by filing a written abandonment or a stipulation for abandonment with the clerk of the superior court. (Rule 8.244(b)(1).)
 - b. Stipulation or motion to dismiss. After the record is filed, an abandonment of an appeal or a stipulation of the parties to dismiss the appeal must be filed in the Court of Appeal (rule 8.244(c)(1)), which may order the dismissal and immediate issuance of the remittitur (rule 8.244(c)(2)).

B. Criminal and Juvenile Appeals

An appellant in a non-death penalty criminal case or in a juvenile case may abandon his/her appeal at any time. (Rules 8.316(a), 8.411(a).) If the record has not been filed, the written abandonment must be filed with the clerk of the superior court and operates to dismiss the appeal and to restore the jurisdiction of the superior court. (Rules 8.316(b)(1), 8.411(b)(1).) If the record has been filed, the abandonment must be filed with the Court of Appeal, which may order the dismissal and immediate issuance of the remittitur. (Rules 8.316(b)(2), 8.411(b)(2).)

V. Substitution or Withdrawal of Attorneys

- A. Substitution. A substitution of counsel must be signed by the party to the appeal and the new attorney. (Rule 8.36(b).) The original and one copy of a substitution of an attorney must be served and filed in the Court of Appeal. (Rules 8.44(b)(6), 8.36(b).) A file-stamped copy of a substitution filed in the superior court does not effect a substitution of counsel in the Court of Appeal. In all appeals and in original proceedings related to a superior court proceeding, the party must also serve the superior court. (Rule 8.36(b).)
- B. Withdrawal. An attorney may request withdrawal by filing a motion to do so. Unless the court orders otherwise, the motion need be served only on the party represented and the attorneys directly affected. (Rule 8.36(c)(1).) The proof of service need not include the address of the represented party. However, if the motion is granted, the withdrawing attorney must provide the court and the opposing party with the party's current or last known address and telephone number. (Rule 8.36(c)(2).)
- C. Notification. In all appeals and in original proceedings related to a superior court proceeding, the Court of Appeal will forward notice of a substitution or withdrawal to the clerk of the superior court. (Rule 8.36(c)(3).)

VI. Oral Argument

- A. Notice. Once the respondent's brief is filed or the time for doing so has expired, the clerk will send a notice inquiring whether the parties desire oral argument.
- B. Requesting or Waiving Oral Argument. Parties desiring oral argument must respond within 10 days of the date of the notice. If no response is received within the time specified, oral argument will be deemed waived.
- C. Time Allowed for Argument. Argument will be limited to no more than fifteen minutes per side, unless additional time is granted by leave of court upon a party's advance written request. (Rules 8.256(c), 8.366(a), 8.470; Misc. Order No. 021505 (Feb. 15, 2005); Ct. App., Fourth Dist., Div. One, Internal Operating Practices & Proc., § VII, Oral Argument.)

- D. Date and Time for Argument. If oral argument is requested, the parties will be notified of the date and time approximately 30 days before the date scheduled for oral argument. Oral argument is generally held during the second full week of the month, although a case may be calendared during other times when resolution of the matter is urgent or for other good cause.

VII. Decision in the Court of Appeal

- A. Opinion. Unless disposed of by an order or other action, an appeal is decided by an opinion of the court, with written reasons for the decision. At two least justices must agree on the result. (Cal. Const., art. VI, § 3.)
- B. Finality. The Court of Appeal has power to grant rehearing, publish or modify an opinion or otherwise act in the case until it becomes final.
1. Finality generally. Except in certain circumstances (for example, section 2 below), the opinion becomes final in 30 days. (Rule 8.264(b).) Some decisions may become final at other times under the Rules of Court or by special order of the court. For example, dismissals of appeals on request or stipulation become final immediately, as do summary denials of writ petitions. (Rules 8.264(b)(2), 8.490(b)(1).)
 2. Events that extend finality. If the court orders the opinion published after it is filed or modifies it in a way that changes the judgment, the opinion becomes final 30 days after the order publishing or modifying the opinion is filed. (Rule 8.264(b)(3), (c)(2).) A modification order will state whether there is a change in the judgment. (Rule 8.264(c)(2).)

VIII. Rehearing

- A. Jurisdiction. The Court of Appeal has jurisdiction to consider and order rehearing of a case until the decision becomes final, as described in section VII. above.
- B. Necessity of Requesting Rehearing. The filing of a petition for rehearing is crucial if a party believes that the Court of Appeal decision has misstated or omitted an important fact or point of law and intends to seek review in the California Supreme Court relating to that fact or point of law; absent the filing of a petition, the California Supreme Court's policy is to accept the Court of Appeal's statement of the issues and recitation of the facts. (Rule 8.500(c)(2).)
- C. Filing and Service. A petition for rehearing may be served and filed within 15 days after the filing of (i) the opinion, (ii) a publication order restarting the finality period under 8.264(b)(3) (if the party has not already filed a rehearing petition), (iii) a modification order changing the appellate

judgment under rule 8.264(c)(2) or (iv) the filing of a consent under 8.264(d). (Rules 8.268(b) (1)(A)-(D), 8.366(a), 8.470; see rule 8.25.) It must have an orange cover. (Rule 8.40(b).)

- D. Answer to Petition. An answer to a petition for rehearing cannot be filed unless the court requests one. If an answer is requested, it must be served and filed within 8 days after the order requesting it is filed, unless the court orders otherwise. (An answer must have a blue cover. (Rule 8.40(b).) A petition for rehearing normally will not be granted unless the court has requested an answer. (Rule 8.268(b)(2); see rule 8.25.)

IX. Review by the California Supreme Court

- A. Time for Requesting. A party may ask the California Supreme Court to review a decision of the Court of Appeal by serving and filing a petition for review within 10 days after the Court of Appeal decision becomes final in that court. (Rule 8.500(a) & (e)(1); see rules 8.264(b), 8.366(a), 8.470.) Guidance on petitions for review is available at <http://www.courts.ca.gov/2962.htm>.
- B. Requirements. Rules 8.40(b), 8.500 and 8.504 describe the requirements for petitions for review, answers thereto and reply briefs.
- C. Applicable Procedures. Rules 8.512 through 8.544 describe the procedures for granting or denying review and the procedures that apply if review is granted. For further information concerning Supreme Court procedures, consult the rules or call (415) 865-7000 (San Francisco).

X. Remittitur - [Rule 8.272]

- A. What the Remittitur Does. A remittitur is the document that communicates a final determination by the reviewing court to the superior court, and transfers jurisdiction over the case back to the superior court where the case originated so as to permit that court to proceed in accordance with the decision on appeal.
- B. When It Issues. Absent a petition for review and any extension to the time period for the Supreme Court to grant review on its own motion, a remittitur will issue 31 days after the Court of Appeal decision is final. If a petition for review is filed or the Supreme Court extends the time to grant review on its own motion, a remittitur will issue when the case becomes final as to the Supreme Court. (See rules 8.272, 8.366(a), 8.470, 8.512(c), 8.532.)

XI. Costs on Appeal in Civil Cases

- A. Entitlement to Costs on Appeal. Unless the Court of Appeal orders otherwise, under rule 8.278(a) the prevailing party in the appeal is entitled to costs on appeal. Rule 8.278(a)(1)-(3) defines "prevailing party."

- B. Court of Appeal Decision. The Court of Appeal may award or deny costs in the interests of justice. The court will specify the award of costs if the judgment is reversed or modified in part. (Rule 8.278(a)(3) & (5).)
- C. Applicable Procedures for Claiming or Opposing Costs (Rules 8.278(c), 3.1700): A party claiming costs awarded by the Court of Appeal must file a verified memorandum of recoverable costs in the superior court within 40 days after the remittitur issues (see section XIV above). (Rule 8.278(c)(1).) Rule 8.278(d) defines the items that are recoverable as costs on appeal.

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